Local 345, Brotherhood of Utility Workers of New England, Incorporated (New England Power Service Company) *and* Robert A. Parker, Jr.,
Local 345, Brotherhood of Utility Workers of New England, Incorporated, and the Brotherhood of Utility Workers of New England, Incorporated *and* Robert A. Parker, Jr. Cases 1-CB-2971 and 1-CB-3230

April 30, 1982

THIRD SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On July 8, 1980, the National Labor Relations Board issued its Second Supplemental Decision and Order in this proceeding[1] in which it declined to reexamine the Administrative Law Judge's substantive findings in light of Respondents' exceptions, but instead entered an Order which conformed to the remedy set forth by the Administrative Law Judge, and which was reflected in the Board's First Supplemental Decision and Order in this proceeding. Thereafter, the General Counsel applied to the United States Court of Appeals for the First Circuit for summary entry of a supplemental judgment enforcing the Board's Second Supplemental Order. The court denied this application, vacated the Board's Order, and remanded the case to the Board "for consideration of [R]espondents' exceptions to the unfair labor practice violations found by the Administrative Law Judge insofar as those violations form the basis for the additional relief ordered [in the First Supplemental Order]. . . ."[2]

On March 2, 1981, the Board accepted the court's remand and notified the parties that they could file statements of position with regard to the issues raised by the remand. Subsequently, the General Counsel and Respondents filed statements of position.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire case in light of the record, the court's memorandum and order, and the statements of position on remand and we now enter the following findings:

1. In its Second Supplemental Decision, the Board, in response to the first remand of this case by the court,[3] entered an Order which conformed to the remedy recommended by the Administrative Law Judge. The Board did so because it read the court's remand as permitting Respondents the right to file exceptions to the Board's previous Order in this case,[4] but not to the substantive findings of the Administrative Law Judge. As noted above, the court has again remanded the case to the Board so that Respondents may file exceptions to such substantive findings. Thus, it should be noted that this Decision represents the first instance in which the Board has considered the substantive unfair labor practice findings in this case. We now turn to this consideration.

2. The relevant facts are as follows: In April 1975,[5] the contract between the International Brotherhood of Electrical Workers, AFL-CIO (IBEW), and the Company expired. The IBEW went on strike and picketed the Employer. Respondent Local 345, Brotherhood of Utility Workers of New England, Incorporated (Local 345 or the Union), held a membership meeting on April 17 to decide how to respond to the IBEW strike. Local 345 decided to honor the IBEW picket line. Between April 18 and June 20, certain members of Local 345 refused to cross the IBEW picket line. The Administrative Law Judge found that the refusal of Local 345's members to work in deference to the IBEW picket line constituted a work stoppage in breach of the no-strike provision of the then-existent contract between Local 345 and the Employer.[6] However, many members of Local 345 crossed the picket line and continued to work for the Employer. The contract between Local 345 and the Employer expired on June 20. Thereafter, Local 345 commenced its own strike against the Employer, which lasted until September 14.

During the sympathy strike by Local 345 in support of the IBEW, Local 345 paid Blue Cross-Blue Shield (BC-BS) health benefit premiums for those of its members who did not cross the IBEW picket line. The Employer had notified striking employees that their health benefits payments would be stopped. Local 345 paid the health benefits for those who could not afford to pay premiums on their own.[7] Local 345 also continued paying these

[1] 250 NLRB 469.

[2] The court's decision was in an unpublished memorandum and order entered January 13, 1981.

[3] *N.L.R.B.* v. *Local 345, Brotherhood of Utility Workers of New England, Inc.*, 612 F.2d 598 (1st Cir. 1980).

[4] That Supplemental Decision and Order was not reported in Board volumes.

[5] All dates hereinafter are in 1975 unless otherwise indicated.

[6] Respondents have never excepted to this conclusion by the Administrative Law Judge, nor have they excepted to the Administrative Law Judge's further finding that fines levied by Local 345 and upheld by the Brotherhood of Utility Workers of New England, Incorporated, against two members who crossed the IBEW picket line violated Sec. 8(b)(1)(A) of the Act. In the absence of exceptions, we adopt these conclusions and findings. But see *International Union of Operating Engineers, Local Union 18, AFL-CIO (Davis-McKee, Inc.)*, 238 NLRB 652 (1978).

[7] At the meeting of April 17, when Local 345's members decided not to cross the IBEW picket line, the question of Blue Cross-Blue Shield

Continued

premiums when it conducted its own strike. In order to pay these and other unspecified debts incurred during the strike, Local 345 obtained two loans. These loans were obtained pursuant to authorization received at union meetings. In October, subsequent to the end of the strike, Local 345's membership also voted to increase dues in order to meet its financial obligations, including the repayment of the loans.[8] Lastly, during the time of the strike, Local 345 members who did not cross the IBEW picket line paid no dues for that period. Local 345 members who worked, however, had dues deducted by the Employer.[9]

The General Counsel contends that Respondent Local 345 "condoned" the activity of those members who honored the IBEW picket line from April 18–June 20 (and thereby breached the no-strike provision), but "punished" those members who crossed the picket line and went to work. The General Counsel asserts that Respondents condoned the activities of those who honored the picket line by paying their BC–BS payments, by forgiving their dues obligations from April 18–June 20, and by increasing the dues of all members to pay debts incurred to pay the health benefits premiums during the sympathy strike. The General Counsel argues that by these actions Local 345 violated Section 8(b)(1)(A) of the Act. We do not agree.

At the outset, we note that Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in Section 7: *Provided*, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." As the Supreme Court has stated:

> Section 8(b)(1)(A) is a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisals or threats thereof—conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes.[10]

And, pursuant to the proviso to Section 8(b)(1)(A), the Board and the courts have distinguished between internal and external enforcement of union rules. The Supreme Court has noted that "Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's regulations to affect a member's employment status."[11] Thus, unions may pass, and operate under, a myriad of rules governing internal affairs as long as those rules encompass a legitimate union interest, impair no policy imbedded in the labor laws, and are reasonably enforced against members who can leave the union and thus escape the effect of the rule.[12]

With these principles in mind, we conclude that the Union action complained of here cannot be held to have restrained or coerced employees in the exercise of their Section 7 rights within the meaning of Section 8(b)(1)(A) of the Act. Thus, it is apparent on this record that the Union's conduct in providing benefits and forgiving the dues of strikers does not constitute direct action, as would a fine for example,[13] to interfere with the employment status of members who exercised their right to cross the picket line and return to work. Nor did the Union by *indirect* means penalize those members who chose to work. Thus, as noted previously, members who worked continued to receive the full benefits, including health benefits, provided under the established collective-bargaining agreement, and continued, pursuant to their unrevoked checkoff authorizations, to pay dues. In sum, those members who continued to work were in exactly the position, insofar as their employment status was concerned, that they would have been in had there been no strike.

It is true, as the General Counsel urges, that the Union provides some assistance in the form of health benefits to strikers and that it forgave dues of strikers while they were on strike and hence not

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payments was raised. Local 345's response was that, if individual members could not pay the premiums, Local 345 would "try" to arrange to have them paid. The Union had paid for such benefits in the past. The record indicates that many members who honored the IBEW picket line paid their own premiums, or arranged coverage under a spouse's plan. Approximately 159 premiums were paid by Local 345.

[8] The dues were increased from $1.25 per week to $3.25 per week.

[9] The contract between Local 345 and the Employer contained a union-security provision and a dues-checkoff provision. During the strike, dues were also deducted for those members earning vacation or sick pay. Local 345's bylaws state that dues can be forgiven when members are on strike.

[10] *N.L.R.B.* v. *Drivers, Chauffeurs, Helpers, Local Union No. 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Curtis Bros., Inc.]*, 362 U.S. 274, 290 (1960).

[11] *N.L.R.B.* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 195 (1967). See *Scofield* v. *N.L.R.B.*, 394 U.S. 423 (1969); *National Maritime Union*, 78 NLRB 971 (1948), enfd. 175 F.2d 686 (2d Cir. 1949).

[12] *Scofield, supra*, 394 U.S. at 430.

[13] See above, fn. 6. At one union meeting after the sympathy strike, the question of the dues forgiveness was raised. One of the union officers said back dues would not be requested, and those who had worked had to pay dues "because they worked." The union treasurer confirmed this viewpoint, stating that he did not believe that those who had not crossed the IBEW picket line were required to pay dues because "they weren't working, and they had no money coming in." Thus, merely because the union president may have also said that those who honored the picket line would not be charged back dues "because they were good union members" does not, without more, establish a violation of the Act.

working. It can also be granted that the cost of this assistance and the loss of revenues from dues, like other union costs, is ultimately borne by the general membership, either by special assessments or by increased dues. Nonetheless we fail to see, nor are we directed to any relevant precedent which holds, that such remote and exiguous impact is a sufficient predicate for our intrusion in internal union affairs and for a finding of an 8(b)(1)(A) violation.[14] Indeed, it seems self-evident that not all union members will be satisfied with every action taken by their union but their dissatisfaction does not of itself establish a violation of our Act.[15] Accordingly, in the circumstances, we shall dismiss this allegation of the complaint.[16]

ORDER

It is hereby ordered that the Respondents, Local 345, Brotherhood of Utility Workers of New England, Incorporated, and the Brotherhood of Utility Workers of New England, Incorporated, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Assessing fines against or otherwise disciplining members for not engaging in or participating in a work stoppage during the existence of a no-strike clause between Respondents and the Employer, whether said work stoppage be in furtherance of direct demands of Respondents and their members or in furtherance of demands of any other union or local.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Rescind the fines assessed upon members Robert Parker and Mary Label for having crossed the picket line of the IBEW during the period of such picket line from April 18 through June 19, 1975, and inform each of them by letter that said fine has been rescinded.

(b) Return to Parker and Label any money paid toward those fines.

(c) Expunge from all records any indication of charges, trials, or fines relating to Parker and Label.

(d) Post at their offices copies of the attached notice marked "Appendix."[17] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondents' authorized representatives, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Mail or deliver to the Regional Director for Region 1 copies of said Appendix for posting by New England Power Service Company, if said Employer is willing, at all places where notices to its employees are customarily posted.

(f) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the complaint in this proceeding be, and it hereby is, dismissed insofar as it alleges violations of the Act not herein found.

[14] It appears on the record before us that the actions complained of were undertaken only after votes at regular union meetings. In any event, it is not within our jurisdiction nor do we pass on the question of whether for some reason the Union's conduct may have violated some other provision of state or Federal law under which aggrieved members may have redress.

[15] Cf. *Ford* v. *Huffman*, 345 U.S. 330 (1952); *United Food and Commercial Workers, International Union, AFL–CIO, and its Local 222 (Iowa Beef Processors and/or Farm Products, Inc.*, 245 NLRB 1035 (1979); *International Union of Elevator Constructors Local Union No. 8, AFL–CIO (San Francisco Elevator Co.)*, 243 NLRB 53 (1979).

[16] We have also concluded that, in the present posture of this case, Respondents should not now be required to mail to each member a letter advising them that Respondents violated the Act. The posting of the notice should be sufficient to inform members of Respondents' unlawful conduct.

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT assess fines or otherwise discipline members for not engaging or participating in a work stoppage in violation of the no-strike clause between the undersigned union, Local 345, Brotherhood of Utility Workers of New England, Incorporated, whether the work stoppage is in furtherance of direct demands of the undersigned and its members, or in furtherance of demands of any other union or local.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

WE WILL rescind the fines assessed upon members Robert Parker and Mary Label for having crossed the picket line of the IBEW during the period of such picketing from April 18 through June 19, 1975; return to Parker and Label any money paid toward those fines; and expunge from all records any indication of charges, trials, or fines relating to Parker and Label.

LOCAL 345, BROTHERHOOD OF UTILITY WORKERS OF NEW ENGLAND, INCORPORATED; THE BROTHERHOOD OF UTILITY WORKERS OF NEW ENGLAND, INCORPORATED